

In the Matter of	)	
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Tribal Mobility Fund Phase I (Auction 902)	)	AU Docket No. 13-53

## INTRODUCTION

MATI was formed for the purpose of bringing modern communications services to the people of the Mescalero Apache Reservation. MATI serves the Mescalero Apache Reservation, an area consisting of approximately 720 square miles in south central New Mexico. MATI, as a wholly owned enterprise of the Mescalero Apache Tribe, undertook the risky venture of serving a historically underserved and economically disadvantaged area in order to afford the Mescalero Apache people with access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, and thereby increase the Tribe's access to education, commerce, government, and public services. MATI, by taking the steps it did, also helped bridge the physical distances between those living on the Reservation and the emergency, medical, employment, and other services that they may need to improve the standard of living on

<sup>1</sup> See March 29, 2013 Public Notice (DA 13-323), *Tribal Mobility Phase I Auction Schedule for October 24, 2013, Comment Sought on Competitive Bidding Procedures for Auction 902 and Certain Program Requirements (Auction 902 Notice)*

the Reservation. MATI continues its commitment to provide service to the Reservation, which now, as with the rest of the United States, must include investment in broadband capable services.

MATI offers these reply comments in order to bring to the Commission's attention the unreasonable barriers being placed in front of Tribally-owned carriers that make participation in the Tribal Mobility Fund Phase I auction nearly impossible. MATI, along with many commenters in the initial round, requests the Commission recognize and remove these barriers, or it risks making the Tribal Mobility Funds, both Phase I and Phase II, ineffective in bringing mobile broadband services to Tribal areas.

### **REPLY COMMENTS**

It is obvious from a reading of the comments filed by Tribes and related entities that there are numerous barriers keeping Tribes from participating in Auction 902. First, the proposed standby, irrevocable letter of credit (LOC) requirement is, in many instances, simply not feasible in Tribal areas.<sup>2</sup> Second, the continuing lack of access to spectrum by Tribally-owned entities makes participation in Auction 902 nearly impossible.<sup>3</sup> Third, the process utilized to determine eligible census blocks, in which Tribal Mobility Fund Phase I support will be available, appears to result in an unreasonable number of excluded areas.<sup>4</sup> Finally, the Commission has not placed enough emphasis on Tribal sovereignty in formulating its proposed rules for Auction 902.<sup>5</sup>

Due to the above, and other, factors, MATI will not be able to participate in Auction 902. While MATI has access to some spectrum, it is not sufficient to meet the requirements of the Tribal Mobility Fund Phase I (3G or better). In addition, the list of eligible census blocks released with the *Auction 902 Notice* shows a mere four census blocks in the Mescalero Apache Tribal area, with a total population of 31.<sup>6</sup> Absent a wider area in which Tribal Mobility Fund

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<sup>2</sup> See e.g., comments of The Gila River Indian Community & Gila River Telecommunications, Inc. (GRTI) at 4; comments of the National Tribal Telecommunications Association (NTTA) at 4; comments of Native Public Media and National Congress of American Indians (NPM/NCAI) at 5

<sup>3</sup> See e.g., NTTA comments at 2; GRTI comments at 5; NPM/NCAI comments at 2

<sup>4</sup> See e.g., NTTA comments at 6; Navajo Nation Telecommunications Regulatory Commission (NNTRC) comments at 4; Smith Bagley Comments at 2; Leech Lake Band of Ojibwe Comments at 2

<sup>5</sup> See e.g., NTTA comments at 5; NPM/NCAI comments at 8; GRTI comments at 7

<sup>6</sup> *Auction 902 Notice*, Attachment A-1. While MATI has been attempting to verify the eligible census block list, it has not been able to do so thus far.

Phase I support will be available, it is not reasonable for MATI to pursue support for such a limited area. Finally, and as stated previously, MATI is unable to obtain an LOC as required in the Commission's Auction 902 rules.<sup>7</sup>

MATI, and likely other Tribally-related entities, will be effectively shut out of the Commission's initial attempt at getting mobile broadband services more available in Tribal areas. As a result, the Commission is apparently content to allow business as usual practices to dictate where mobile broadband services will be made available. In fact, and unless the Commission acts expeditiously to resolve these barrier-to-entry issues for Tribal carriers, the only plausible conclusion that MATI can come to is that the Commission is in part discriminating against Tribal Nations, as the record in this proceeding is crystal clear that mobile broadband service is lacking in Indian Country. Furthermore, and taking this to its anticipated conclusion, only the larger, non-Tribal wireless carriers will be able to participate and receive funding during both of the Phase I and Phase II auction process, which is counter-intuitive to a "Tribal Mobility Fund". Another problem with this policy of complacency is the current business model has yet to bring robust, widely-available mobile broadband services to Tribal areas, hence the stated purpose of Tribal Mobility Funds Phase I and II. The conflict inherent in the stated intent and the practical impacts of the Auction 902 rules is clear - Tribes, and Tribally-owned carriers, will not be substantially involved in this potentially ground-breaking program, when it is the Tribes who should be *most* involved.

In order to avoid the situation discussed above, the Commission must identify and remove the substantial barriers to participation in Auction 902 faced by many Tribes and Tribally-owned carriers. First, and in recognition of its own *Tribal Policy Statement*<sup>8</sup>, the Commission must ensure Tribes have significant, meaningful, and *early* input into how the Tribal Mobility Funds Phase I and II are implemented. Thus, the Commission should heed the advice being provided in comments in this proceeding, and ensure the funds distributed pursuant to Auction 902 are done so in a reasonable and rational manner. Adopting auction rules that effectively prohibit a vast majority of Tribes from participating is not a way to accomplish this. Second, the Commission should finish its investigation into making spectrum available in Tribal

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<sup>7</sup> See MATI comments in WC Docket No. 10-90 and WT Docket No. 10-208, filed December 21, 2012 at 4-7

<sup>8</sup> See *Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080-81 (2000)

areas.<sup>9</sup> Without reasonable access to spectrum, Tribes and Tribally-owned carriers will not be able to participate in the expansion of mobile broadband services in Tribal areas.<sup>10</sup> Finally, MATI believes there is enough concern regarding the eligible census block lists, in part generated by Mosaik data, for the Commission to delay Auction 902 and further investigate, on a wide-scale basis, whether the eligible census block list reflects the reality of mobile broadband service availability in Tribal areas.

### **CONCLUSION**

Before Auction 902 can commence, the Commission should pause and determine whether, as it is now structured, support resulting from the auction will meet the goal of “jump starting” investment in mobile broadband services in Tribal areas. As things stand, the only conclusion that can be drawn is a negative one. While the Tribal Mobility Funds Phase I (and II) hold promise for making quality mobile broadband services available in Tribal areas, the fact is that Auction 902 presents immovable barriers for wide-spread Tribal participation. MATI, whose sole purpose is to bring quality communications services to the historically underserved Mescalero Apache Tribal area, will not be able to participate. In making the auction of Tribal Mobility support such that carriers like MATI cannot participate, the Commission is missing out on a prime opportunity to make a real difference in the lives of Americans living in Tribal areas.

Respectfully Submitted,

*Godfrey Enjady*

Mescalero Apache Telecom, Inc.

May 24, 2013

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<sup>9</sup> *In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking (rel. March 3, 2011)

<sup>10</sup> See NTTA comments at 3, and GRTI comments at 5 for a discussion of alternatives to pre-requiring access to spectrum for Auction 902 participation